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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH SANTAMARIA,

Defendant and Appellant.

H044457

(Santa Clara County

Super. Ct. No. C1635333)

I. INTRODUCTION

Defendant Joseph Santamaria appeals after a jury found him guilty of first degree burglary (Pen. Code, §§ 459, 460, subd. (a))¹ and resisting, delaying, or obstructing a police officer (§ 148, subd. (a)(1)). The trial court sentenced defendant to two years in prison.

On appeal, defendant argues that his trial counsel rendered ineffective assistance when she questioned prospective jurors about their experiences with drug addiction without first securing a ruling on the admissibility of evidence that defendant had previously used drugs. For reasons that we will explain, we determine that defendant fails to demonstrate that the references to drug use during voir dire caused him prejudice. Accordingly, we will affirm the judgment.²

¹ Unspecified statutory references are to the Penal Code.

² Defendant's appellate counsel has filed a petition for writ of habeas corpus, which this court ordered considered with the appeal. We have disposed of the habeas petition by separate order filed this day. (See Cal. Rules of Court, rule 8.387(b)(2)(B).)

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *The Incident*

On February 22, 2016, Angelita Estapia lived with her husband and her children, Desie Anne Levita and Dean Martin Levita, in a home on Krismer Street in Milpitas.³ Estapia's other daughter, Diana Rose Sevilla, visited Estapia's house with her family on weekends.

Defendant is the nephew of Estapia's deceased husband. Defendant had visited Estapia's house "maybe three times" for various family gatherings. The last time Estapia spoke to defendant was sometime in June 2015. Estapia did not give defendant permission to be inside of her house on February 22, 2016. Desie, Dean, and Sevilla also did not give defendant permission to be inside of the house that day.

On the afternoon of February 22, 2016, Augusto Carrillo, who lived directly behind Estapia's house, heard the sound of glass breaking. He looked outside and saw that someone was using a pole to break through the back window of Estapia's house. Carrillo did not notice any visible tattoos or markings on the suspect, who was wearing a white shirt and white gloves. He called the police and reported what he saw. During the 911 call, Carrillo described the suspect as wearing a white shirt with blue sleeves.

Milpitas Police Officers Justin Pancratz and Jonathan Nichols were among the officers who responded to Estapia's house. By the time Officer Pancratz arrived, other officers were already setting up a perimeter around the house. Officer Pancratz and Officer Nichols were positioned near the front of the house. After the perimeter was established, Officer Pancratz and Officer Nichols approached the front door. As they drew close, Officer Pancratz and Officer Nichols saw the front door open several inches. Officer Pancratz "verbally challenge[d]" the person who was opening the door. The door closed, and, through the front window, Officer Pancratz could see the silhouette of a

³ We refer to Desie and Dean by their first names for clarity.

person trying to either open or lock the rear sliding door. Afterwards, Officer Pancratz could hear shouting from officers who were stationed to the rear of the house. Over the police radio, Officer Nichols heard other officers talk about someone jumping over a fence.

Milpitas Police Officer Mattison Madnick was positioned along the back of the house when he saw defendant run out of the rear sliding doors. Defendant was wearing a white shirt with blue sleeves. Defendant attempted to climb over the fence. Defendant ignored Officer Madnick's orders to stop and surrender. After defendant failed to get over the fence, he ran back inside the house.

Milpitas Police Officer Jason Speckenheuer, who had also responded to Estapia's house, was positioned along the fence line adjacent to one of the neighboring houses.⁴ According to Officer Speckenheuer, police dispatch had radioed that a Hispanic male or "Hispanic looking male" wearing a white shirt with blue sleeves and white gloves was breaking into the back window of Estapia's house.

While he was stationed along the fence, Officer Speckenheuer heard a noise to his right and saw a Filipino male, whom he later identified as defendant, jump onto the fence approximately 28 to 30 feet away. Defendant was wearing a white shirt with blue sleeves and white gloves. Officer Speckenheuer identified himself as police and told defendant to stop. Defendant looked "disappointed" and stepped back into the house's backyard. Officer Speckenheuer saw defendant move towards the house and heard the exterior door close after defendant disappeared from view. Officer Speckenheuer believed that defendant was the suspect that Carrillo had described, given defendant's attire and physical attributes. Officer Speckenheuer acknowledged that the reporting party,

⁴ Officer Speckenheuer testified that he arrived at the house "several minutes" after Carrillo reported the crime.

Carrillo, had described the suspect as “Hispanic,” but he believed that Carrillo may have been “easily confused.” He did not notice if defendant had any visible tattoos.

According to the department’s computer aided dispatch (CAD system), Officer Speckenheuer arrived at Estapia’s house at 2:39 p.m., and the police tactical team entered the area behind the house at 2:37 p.m. In other words, the CAD system reflected that Officer Speckenheuer arrived at the house after the tactical team began their search. Officer Speckenheuer was asked about this discrepancy, and he reiterated that he saw defendant before the tactical team went inside the house.

Several officers entered the house to conduct a search after defendant went back inside. Officer Madnick and Milpitas Police Officer Eric Bernardo took part in the search, which was recorded on Officer Madnick’s body camera.

Defendant was the only person found in the house and was located lying on a bed inside the converted garage. After defendant was taken outside, officers conducted a secondary sweep of the home and found a pair of gloves on the floor near the bed and a white shirt with blue sleeves on the garage floor. Officers continued searching the home after defendant was located because they were unsure if there was another suspect involved. Notably, defendant was wearing different clothing than what had been originally reported. Officer Bernardo did not notice any cuts or visible injuries on defendant, and defendant did not attempt to flee when officers confronted him in the garage.

Officer Speckenheuer, who had remained outside to maintain the perimeter around the house, watched as other officers led defendant outside. Officer Speckenheuer noticed that defendant had changed clothes and was now wearing a black shirt.

Milpitas Police Detective Kita Inthasack helped with the investigation. Detective Inthasack searched a Toyota Corolla that was parked near Estapia’s house. The keys to

the Toyota were found in the garage near where defendant was located. Inside the car was a company badge bearing defendant's photo and name and a box of latex gloves.

Detective Inthasack was present when defendant was interviewed after he was taken into custody. At trial, Detective Inthasack was shown a photograph of the broken window at Estapia's house, which he acknowledged had some "pretty noticeable and large glass shards" protruding from it. Detective Inthasack could not recall if defendant had cuts or scratches, or if he had any visible tattoos when he saw him at the interview.

Officer Nichols took various photographs of the crime scene, including the area in the garage where the dryer was located, which the defense later introduced at trial as exhibit B. Officer Nichols confirmed that exhibit B did not depict any laptops or purses, but he did not look under the items that were already on top of the dryer. Officer Nichols said he took the photograph after officers completed their secondary sweep of the house, approximately 15 minutes after they arrested defendant.

According to Estapia, her laptop, which she had left on her bed, had been moved and placed on top of the dryer in the garage. Several other items, including two designer purses and a watch, had been moved and placed on top of the dryer. A cell phone, a watch, and tennis shoes were found in the garage. Estapia said that these items did not belong to Dean, who used the garage as his room. On cross-examination, Estapia was shown exhibit B. Referring to the photograph, Estapia described that she found the two purses behind a laundry detergent container. She did not mention the laptop.

Desie saw a watch and a purse on top of the dryer in the garage area of the house when she came home.

The parties stipulated that on February 26, 2016, defendant had tattoos on his left forearm and right forearm.

B. Charges, Verdict, and Sentence

Defendant was charged with first degree burglary (§§ 459, 460, subd. (a); count 1), resisting, delaying, or obstructing a police officer (§ 148, subd. (a)(1); count 2), and using or being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a); count 3). During a hearing on the motions in limine, the trial court granted the prosecution's motion to dismiss count 3.

On November 9, 2016, a jury found defendant guilty of both remaining counts. The trial court sentenced defendant to two years in prison for count 1 and six months concurrent for count 2.

III. DISCUSSION

Defendant's sole argument on appeal is that his counsel rendered ineffective assistance when she questioned prospective jury members about their experiences with drug addiction without first securing a ruling on the admissibility of defendant's previous drug use. Defendant claims that the questions posed to the prospective jurors during voir dire were highly prejudicial, and there can be no reasonable tactical justification for his counsel's actions.

A. Background

1. Jury Selection

During a hearing on in limine motions, the prosecutor argued that evidence of defendant's past drug use was admissible because there was information that defendant's substance abuse prompted one of his family members to cut off ties with him. The prosecutor asserted that the evidence was relevant to establish that defendant did not have his family members' permission to be inside of Estapia's house at the time of the crime.

Defense counsel requested that evidence of defendant's prior drug use be excluded because it was more prejudicial than probative. Defense counsel explained that she did not anticipate introducing evidence that defendant was under the influence on the day of

the crime, and the prosecutor could otherwise show that defendant lacked permission to be inside Estapia's house. Defense counsel argued that evidence of defendant's prior drug use could allow jurors to make improper inferences. For example, jurors could rely on their perception that drug addicts commit theft and infer that defendant broke into Estapia's house to steal. Defense counsel further argued that evidence of defendant's drug use was based on a vague comment by Dean, who had said that he was no longer in close contact with defendant because of his drug use. Defense counsel requested a hearing under Evidence Code section 402 if the trial court was inclined to admit the evidence.

The trial court agreed with defense counsel that an Evidence Code section 402 hearing was appropriate and expressed that the hearing was "something we could do briefly right before [Dean's] testimony." The court, however, acknowledged that there was some conflict over whether defendant's drug use was something that should be addressed with prospective jurors during jury selection.

Defense counsel stated: "I am conflicted about that. I would imagine if the Court is asking just general questions regarding past experiences and any experiences with a wide variety of crime, including drug use, narcotics, I think that . . . may be appropriate because I do agree with the Court's concern that if the evidence is allowed, we don't want to find out that there's a cause issue in the middle of trial."

In response, the trial court stated: "I think I will maybe ask some very generalized questions in that area but not indicate whether or not that is coming into evidence here. We'll keep it within the category of crime but some specific questions related to drugs."

Thereafter, jury selection began. On the second day of jury selection, the trial court noted that at that point, nobody had broached the subject of drug use with the prospective jurors. The court remarked that "evidence [relating to drugs] may very well come in depending on how the 402 hearing goes." The court then asked the parties if

they wanted the jurors to be questioned about their experiences with drug use. Defense counsel responded, “Your Honor, would the Court consider just maybe asking a general question about whether or not anyone has had any experiences or family members suffering from addiction [¶] . . . [¶] Just maybe a quick general question.” The court responded, “All right. Then I’ll ask that last follow-up question.”

After a short recess, the trial court addressed the prospective jurors, stating: “I want to ask first generally whether any of you may have had any personal experiences—and like the other similar questions, you, a loved one, someone close, family or friend, who you may have some close experience with, someone either using drugs or being under the influence of drugs or dealing with drug addiction. [¶] Let me ask that question first. Is there anybody where that’s an issue for you or someone close to you, a close friend or family member, who’s had to deal with that?”

Several prospective jurors indicated that they had such experiences, and the trial court asked these jurors some additional follow-up questions. With one prospective juror, the court asked, “If there was to be evidence in this case—and again we’re not really talking about the case, but just in many cases different evidence might come up, and I like to kind of clear it ahead of time. If there was evidence in this case related to any possible witness who may have either been—used drugs in the past or had some issues related to that, is that something that would affect you in such a way because of your past experiences that it would be hard for you to use those same standards I talked about in judging witnesses? I mean, would you be able to still evaluate that witness’s testimony under the same standards?”

The trial court also asked, “[I]f you heard other evidence, you know, of a witness or someone in the case having used drugs in the past, is that going to affect your opinion of that person, or will you just again be able to set aside any personal experiences that you had and listen to the evidence in this case or because of your personal experience

with someone who's used drugs in the past, do you think that's going to cloud your ability to listen to the facts of this case?" None of the jurors indicated that evidence of drug use would prohibit them from impartially evaluating the case.

Defense counsel also asked some of the prospective jurors questions about their experiences with drug use. First, defense counsel asked one of the prospective jurors: "If you heard that someone used drugs in the past, evidence or testimony about past drug use, which isn't necessarily relevant to any of the charged crimes, would you then assume that the person who used drugs in the past is more likely to commit the charged crimes even if that's not an element that you're supposed to consider?"

Defense counsel then posed a question to a prospective juror who had answered that he had a niece who had issues with drug use. Defense counsel asked the prospective juror if his sister, the niece's mother, had ever talked to him about his niece committing crimes that were attributed to drug use. Defense counsel then asked the prospective juror if, assuming his niece was accused of a crime, he would "give her the benefit of the doubt like you would everyone else, or would [he] say, well, I also heard she uses drugs so she probably commits crimes too?" Defense counsel also followed up with a more generic question, asking the prospective juror, "if you heard testimony of past drug use, would you still be able to just view the evidence in front of you to determine whether or not a crime had been committed and block out past allegations of drug use?" The prospective juror responded, "I believe so." None of the jurors indicated that they would improperly use evidence of drug use or would be unable to set aside their personal experiences when evaluating the evidence.

After voir dire of the prospective jurors regarding their experiences with drug use and drug addiction, none of the prospective jurors were excused for cause, but both defense counsel and the prosecutor used peremptory challenges to excuse certain prospective jurors. Several other prospective jurors were seated to continue jury

selection, and the trial court engaged in some additional dialogue about drug use with the newly seated prospective jurors. Again, none of these newly seated prospective jurors said that they would improperly consider evidence of drug use. After the completion of voir dire, the jury was sworn in.

2. The Evidence Code Section 402 Hearing

Outside the presence of the jury, and before their respective trial testimonies, the trial court questioned Estapia and Dean about their relationship with defendant. Estapia said that there was no specific reason for why she was not in contact with defendant. Dean said that he did not have any personal knowledge about defendant's drug use. Given this testimony, the court found that evidence of defendant's drug use had "some probative value . . . but it was minimal and outweighed by its potential prejudice" Thereafter, the court excluded the evidence under Evidence Code section 352.⁵ The court, however, informed the prosecutor that "if for some reason something came up on cross or in the Defense case, that somehow raised the issue, you can renew your motion [to admit evidence of defendant's drug use]."

B. Legal Principles

An ineffective assistance of counsel claim requires a showing that "counsel's action was, objectively considered, both deficient under prevailing professional norms and prejudicial." (*People v. Seaton* (2001) 26 Cal.4th 598, 666, citing *Strickland v. Washington* (1984) 466 U.S. 668, 687 (*Strickland*).) "[T]he burden is on the defendant to show (1) trial counsel failed to act in the manner to be expected of reasonably competent attorneys acting as diligent advocates and (2) it is reasonably probable that a more favorable determination would have resulted in the absence of counsel's failings."

⁵ After the trial court made its ruling, Desie was questioned by the prosecutor outside the presence of the jury. Desie was asked if she had any knowledge of defendant's involvement in criminal activity. She answered that she did not.

(*People v. Lewis* (1990) 50 Cal.3d 262, 288.) This means that the defendant “must show both that his counsel’s performance was deficient when measured against the standard of a reasonably competent attorney and that counsel’s deficient performance resulted in prejudice to [the] defendant in the sense that it ‘so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.’ ” (*People v. Kipp* (1998) 18 Cal.4th 349, 366, quoting *Strickland, supra*, at p. 686.)

The “prejudice” element requires a showing “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been more favorable to defendant, i.e., a probability sufficient to undermine confidence in the outcome.” (*In re Ross* (1995) 10 Cal.4th 184, 201.) Prejudice requires a showing of “a ‘demonstrable reality,’ not simply speculation.’ ” (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1241.)

Defendant’s burden of establishing ineffective assistance of counsel is a significant one: “Surmounting *Strickland*’s high bar is never an easy task.” (*Padilla v. Kentucky* (2010) 559 U.S. 356, 371.) And in deciding an ineffective assistance of counsel claim, the reviewing court need not inquire into the two components (deficient performance and prejudice) in any particular order. (See *In re Cox* (2003) 30 Cal.4th 974, 1019-1020.) “[A] court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel’s performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.” (*Strickland, supra*, 466 U.S. at p. 697.)

C. Analysis

We focus on the second prong of the *Strickland* analysis, whether defendant suffered prejudice due to his counsel’s allegedly erroneous acts or omissions. Based on

the record, we determine that defendant has failed to demonstrate prejudice. The prejudicial impact of the comments made during voir dire was limited by the general context of jury selection, the nature of the statements, and the jury instructions that were later given by the trial court. Moreover, there was strong evidence of defendant's guilt.

First, the fact that the allegedly erroneous references to drug use were made during jury selection greatly diminishes any prejudicial effect. "[E]rrors or misconduct occurring during jury voir dire, prior to the introduction of evidence or the giving of formal instructions, are far less likely to have prejudiced the defendant." (*People v. Medina* (1995) 11 Cal.4th 694, 745.) "[S]uch errors or misconduct 'prior to the presentation of argument or evidence, obviously reach the jury panel at a much less critical phase of the proceedings, before its attention has even begun to focus upon the penalty issue confronting it.' " (*Id.* at p. 741.)

Second, the statements were not particularly inflammatory, contrary to defendant's claims. Quoting *People v. Cardenas* (1982) 31 Cal.3d 897, 907, defendant argues that " '[t]he impact of narcotics addiction evidence "upon a jury of laymen [is] catastrophic. . . . It cannot be doubted that the public generally is influenced with the seriousness of the narcotics problem . . . and has been taught to loathe those who have anything to do with illegal narcotics in any form or to any extent." ' " Defendant also contends that the information about drug use was particularly prejudicial in this case, because it provided a motive for his burglary of his relatives' home. Defendant's arguments, however, are undermined by the fact that the questions and comments made during jury selection were *not* evidence.

We observe that defense counsel made certain comments during voir dire that alluded to the fact that evidence of defendant's drug use might be introduced at trial. During jury selection, defense counsel asked prospective jurors, "[i]f you heard that someone used drugs in the past, evidence or testimony about past drug use, which isn't

necessarily relevant to any of the charged crimes, would you then assume that the person who used drugs in the past is more likely to commit the charged crimes even if that's not an element that you're supposed to consider?" Since defendant was the only person charged with a crime in this case, the prospective jurors could have inferred that defendant was the "person who used drugs" in defense counsel's hypothetical question.

Nevertheless, neither the prosecutor nor defense counsel elicited evidence that defendant had problems with drug use during the trial. Moreover, the jury was instructed twice—once after voir dire and once after the close of evidence—that (1) the verdict must be based on the evidence, (2) evidence included sworn testimony, exhibits, and anything else indicated by the court that may be considered evidence, (3) the statements of the attorneys were not evidence, (4) the jury should not permit bias to influence its decision, and (5) defendant was presumed innocent until proven guilty beyond a reasonable doubt. Questions and statements made by the trial court and counsel during voir dire do not fit under the definition of "evidence" given to the jury. Accordingly, there was no occasion for the jury to consider defendant's alleged drug use when it rendered its decision. We presume the jury followed the court's instructions and disregarded the comments since there was no evidence of defendant's drug use presented at trial. (See *People v. Osband* (1996) 13 Cal.4th 622, 676 [any prejudice that may have resulted from jurors hearing extraneous comments in the hallway outside of the courtroom was cured by court's admonition to disregard anything they might hear beyond the witness stand].) "It is fundamental that jurors are presumed to be intelligent and capable of understanding and applying the court's instructions." (*People v. Gonzales* (2011) 51 Cal.4th 894, 940.)

Defendant's prejudice argument is premised on his speculation that the jurors improperly considered the references to drug use made during jury selection and used their preconceived biases against drug users to reach a verdict. However, none of the impaneled jurors said that they would improperly use evidence of drug use should such

evidence be admitted at trial, and there is nothing in the record to suggest that the jurors were untruthful during voir dire. There is also nothing in the record to suggest the jurors disobeyed the court's instructions and improperly considered comments made during voir dire as evidence.

Defendant cites to *People v. Clark* (1951) 104 Cal.App.2d 634 (*Clark*) and *People v. Cole* (1960) 177 Cal.App.2d 458 (*Cole*) and argues that these cases establish guiding principles for us to evaluate whether comments made during voir dire are prejudicial. In *Clark*, the defendant argued reversible error occurred when the prosecutor was permitted to describe the crime that defendant was charged with to prospective jurors. (*Clark, supra*, at pp. 636-637.) The court determined that there was nothing prejudicial about the statements, and there was nothing "material [in the statements] that was not thereafter shown by the evidence." (*Id.* at p. 637.)

In *Cole*, the defendant challenged the prosecutor's statements during voir dire, which referenced the defendant's prior felony conviction. (*Cole, supra*, 177 Cal.App.2d at pp. 460-461.) The Court of Appeal determined that the statements were not prejudicial because the defendant's own counsel first raised the issue during his voir dire examination, there were no contemporaneous objections, and the defendant's prior conviction was later proved at trial. (*Id.* at p. 461.) The court further noted that the tenor of the examination of the prospective jurors was whether they would follow the trial court's instructions "and consider proof of conviction of a felony in determining such witness' credibility." (*Ibid.*) Moreover, the trial court later properly instructed the jury on the limited purpose for which the evidence was admitted. (*Ibid.*)

Relying on *Clark* and *Cole*, defendant argues that the prejudicial impact of comments made during voir dire is lessened when related evidence is later introduced at trial, and further lessened if the jury is instructed on the limited purpose for which the evidence is admitted. (*Clark, supra*, 104 Cal.App.2d at p. 637; *Cole, supra*, 177

Cal.App.2d at pp. 460-461.) Defendant argues that neither of these ameliorative factors are present in this case because evidence of drug use was not admitted at trial, and, as a result, no limiting instructions were given. Thus, he argues that prejudice is more readily demonstrated in his case.

We do not believe that *Clark* and *Cole* provide guiding principles to review defendant's claim of prejudice in this case. Both *Clark* and *Cole* dealt with situations inapposite to the one presented here because in both cases evidence supporting the allegedly prejudicial statements was later admitted at trial. (*Clark, supra*, 104 Cal.App.2d at p. 637; *Cole, supra*, 177 Cal.App.2d at p. 461.) Here, in contrast, evidence supporting the allegedly prejudicial statements was never introduced. We are thus left with evaluating the prejudicial impact of the limited comments made by the trial court and defense counsel during jury selection *alone*. A determination of prejudice is dependent on the specific facts in each case. Based on the circumstances in this case, we conclude that the statements made during voir dire were not prejudicial.

Lastly, we determine that the limited nature of the comments made during voir dire did not prejudice defendant because the evidence of his guilt was strong. Officer Speckenheuer and Officer Madnick saw defendant try to jump over the fence while wearing a white shirt with blue sleeves, matching the description of the suspect that Carrillo saw breaking into Estapia's house. Defendant was the only person found inside of the home, officers found a box of latex gloves inside of defendant's car, and they found a white shirt with blue sleeves on the garage floor. Estapia, Desie, Dean, and Sevilla all testified that they did not give defendant permission to be inside of the house that day. They also testified that they were not particularly close with defendant and that they had not seen or talked to him for a while before the day of the crime.

Defendant insists that the persuasive weight of Officer Speckenheuer's testimony was significantly diminished by the discrepancy between the recorded time of his arrival

and his statement that he saw defendant attempt to climb over the fence. Officer Speckenheuer acknowledged that according to the department's CAD system, he arrived at the Krismer Street house at 2:39 p.m., and the tactical team entered the area behind the house at 2:37 p.m. In other words, the CAD system reflected that Officer Speckenheuer arrived after officers began to search the house. Despite the discrepancy with Officer Speckenheuer's recorded time of arrival, Officer Speckenheuer was unequivocal about what transpired when he testified at trial. When confronted with the CAD system data, Officer Speckenheuer reiterated that he saw defendant before the tactical team went inside the house to conduct the search. In addition, Officer Speckenheuer's testimony was corroborated by Officer Madnick, who similarly described that defendant attempted to jump over the fence, and by Officer Nichols, who testified that he heard other officers talk over the police radio about someone attempting to jump over a fence line. Thus, we do not believe that the discrepancy with Officer Speckenheuer's recorded time of arrival greatly diminished his credibility or weakened the prosecution's case.

In addition, there was ample evidence that defendant did not have permission to be inside of Estapia's house. Only one resident of the house, Estapia's husband, did not testify at trial, and, as we already observed, all the other residents (Estapia, Desie, Dean, and Sevilla) testified that they were not particularly close with defendant and that defendant did not have their permission to be inside the house. Moreover, defendant's behavior strongly indicates that he was at the house without authorization. Carrillo testified that he saw someone breaking the back window of the house with a pole, an action that is not typically carried out by someone who has the homeowners' permission to enter. Defendant did not comply with officers' commands to stop when he opened the front door, and he attempted to flee over the fence line when confronted, only to retreat back inside of the house. Moreover, defendant changed his clothes after he went back inside, indicating that he may have attempted to conceal his identity.

Defendant disputes the strength of the evidence that he broke into the house to commit a theft. He argues that there are discrepancies between Estapia's testimony that her laptop was moved to the top of the dryer, the photographic evidence, and Desie's testimony.

After carefully reviewing the record, we do not find that there were significant discrepancies about what items were moved that impaired the prosecution's case. During trial, Estapia testified that several items, including two purses, a watch, and her laptop were moved and placed on top of the dryer in the garage. On cross-examination, Estapia was shown a photograph depicting the dryer area. Although Estapia did not mention the laptop being in the photograph, she never recanted or contradicted her testimony that her laptop was moved, and she testified that she found the two purses behind a laundry detergent container. Officer Nichols, who took the photograph in question, admitted that it did not depict any laptops or purses, but he also said that he did not look under the items that were already on top of the dryer.⁶

Moreover, Desie did not contradict Estapia's testimony. Desie was asked on direct examination if she saw a watch and a purse on top of the dryer, and she indicated that she had seen those items. In other words, Desie did not testify that she did *not* see a laptop on top of the dryer. Even if we assume that there was a discrepancy as to whether Estapia's laptop was moved, both Estapia and Desie's testimonies were consistent that at the least, a watch and a purse were moved.

Based on our review of the evidence in the record, we conclude that the trial court and defense counsel's questions during voir dire regarding experiences with drug use and drug addiction did not cause defendant prejudice. We do not believe "that there is a

⁶ Officer Nichols testified that he took the photographs after officers completed their secondary sweep of the home, approximately 15 minutes after defendant was arrested.

reasonable probability that, but for counsel's unprofessional errors, the result would have been more favorable to defendant, i.e., a probability sufficient to undermine confidence in the outcome." (*In re Ross, supra*, 10 Cal.4th at p. 201.) Accordingly, defendant's claim of ineffective assistance of counsel fails.

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.

People v. Santamaria
H044457